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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

In the Matter of)
Simplification of the Depreciation) CC Docket No. 92-296
Prescription Process)

PETITION FOR RECONSIDERATION

BellSouth Telecommunications, Inc. ("BellSouth"),
through undersigned counsel, respectfully petitions for
reconsideration of the Commission's Report and Order in this
proceeding, FCC 93-452, released October 20, 1993. A
summary of the Report and Order was published in the Federal
Register on November 4, 1993. 58 Fed. Reg. 58788.

In the Report and Order, the Commission revised the
process of prescribing depreciation rates for AT&T and the
price cap local exchange carriers ("LECs"). For AT&T, the
Commission adopted a modified version of the Price Cap
Carrier Option ("PCCO"). For the price cap LECs, the
Commission adopted a Basic Factor Range Option ("BFRO").
For the reasons set forth below, BellSouth requests that the
Commission reconsider its decision to reject the use of the
PCCO for price cap LECs. Alternatively, BellSouth requests
that the Commission revise the BFRO to provide some
simplification and flexibility to all price cap LECs.

This proceeding had three goals: simplification of the
depreciation prescription process, administrative savings,

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and flexibility.¹ Unfortunately, the procedures adopted in the Report and Order will prevent the achievement of all three goals for price cap LECs. Furthermore, the effect of the Report and Order is perverse. Price Cap LECs such as BellSouth, which have aggressively deployed new technology and hence have the most need for more rapid depreciation of their embedded plant, are denied any appreciable flexibility, simplification or administrative savings. The Commission can achieve its stated goals only if reconsideration of the Report and Order is granted.

The Commission gives three reasons for rejecting the PCCO for the price cap LECs: the existence of the sharing mechanism in the LEC price cap plan, inadequate competition for LEC provided interstate access services, and state commission opposition to the PCCO.² None of these reasons has merit.

First, the Commission expresses concern that under the PCCO, it will not have sufficient information to police potential LEC misuse of depreciation rates to manage their earnings to avoid sharing.³ BellSouth and the other price cap LECs fully addressed this concern in their comments and reply comments, offering specific safeguards to address these concerns. The Commission adopted specific information

¹ Report and Order at ¶ 3.

² Report and Order at ¶ 42.

³ Report and Order at ¶ 43.

filing requirements for the PCCO adopted for AT&T in the Report and Order.⁴ The Commission also adopted some of the other safeguards proposed by the LECs as part of the BFRO.⁵ The Report and Order does not discuss why comparable information filing requirements and other safeguards would not be sufficient to permit the adoption of the PCCO for the price cap LECs.

The Commission also expresses concern that adoption of the PCCO will somehow prejudge the outcome of its comprehensive review of the LEC price cap plan.⁶ However, the LEC price cap review will focus on data from 1991-1993. Adoption of the PCCO for price cap LECs will not affect the data sources for the comprehensive review.

Second, the Commission's comparison of the state of competition for LEC access services and AT&T's services does not support the adoption of the PCCO for AT&T and its rejection for the price cap LECs. The Commission continues to classify both AT&T and the price cap LECs as "dominant" carriers. Those AT&T services that remain subject to price cap regulation are regulated in that fashion specifically because there is not sufficient competition for those services to warrant more "streamlined" regulation at this

⁴ Report and Order at ¶¶ 93-94.

⁵ See, e.g., Report and Order at ¶ 72, adopting First Quarter filing requirement.

⁶ Report and Order at ¶¶ 93-94.

time. The Commission's reliance on the fact that it has removed other AT&T services from price cap regulation because they are effectively competitive provides no support for disparate treatment of the AT&T services that remain subject to price cap regulation and those of the price cap LECs.

In fact, nowhere in the Report and Order does the Commission explain its perceived relationship between the degree of competition faced by a carrier and the need for depreciation reform. While competition may be one driver of investment in new technology, the ability to reduce cost is also a potent incentive to deploy newer, more efficient technology. The Commission adopted price cap regulation specifically to provide LECs with incentives to deploy new technology where and when it is profitable to do so. Competition merely reinforces this same incentive. In the absence of a record showing that the degree of competition facing a carrier drives technology deployment decisions, the perceived difference in competition facing AT&T and the price cap LECs is irrelevant. The Commission's reliance on this factor in the Report and Order fails the test for rational decisionmaking.

Third, the Commission's reliance on the lack of state commission support for the PCCO borders on cynicism. The Commission described the PCCO in the Notice of Proposed Rulemaking in a way that made support for that option by

state regulators virtually impossible.⁷ As described in the Notice, the PCCO would have amounted to virtual deregulation of depreciation rates, since no data supporting revised depreciation rates would be supplied by the carriers.⁸ BellSouth conceded that the PCCO described in the Notice would probably not meet the Commission's legal obligations under Sections 220(b) and (i) of the Communications Act.⁹ Thus, the objection of state commissions to the PCCO described in the Notice was predictable, but largely irrelevant to an analysis of the PCCO as finally adopted by the Commission.

The PCCO adopted for AT&T included a requirement that AT&T file the basic data proposed by BellSouth and the other price cap LECs.¹⁰ The Commission found that, as modified, the PCCO meets the Section 220 objections raised by the state commissions. The state Commission's have never been afforded an opportunity to comment on the modified PCCO ultimately adopted by the Commission. The Commission does

⁷ See Report and Order at ¶ 38: "Under the price cap carrier option, carriers would file proposed depreciation rates with the Commission. Those rates would not be supplemented with supporting data. The Commission would propose to adopt the carriers' proposed rates and seek comment on their reasonableness. Prescription of rates would be based on the proposed rates and any comments made thereon."

⁸ Notice of Proposed Rulemaking at ¶ 41.

⁹ BellSouth Reply Comments at 5, footnote 12.

¹⁰ Report and Order at ¶ 93-94.

not explain why the same data requirements adopted for AT&T could not be applied to the price cap LECs, thereby eliminating the legal concerns raised by the state commissions.

The Commission's decision to reject the PCCO for price cap LECs based on the opposition expressed thereto in the record is tainted by the fact that the Commission adopted a fundamentally different approach to the PCCO than that described in the Notice. BellSouth strongly urges the Commission to reconsider its decision to reject application to the price cap LECs of the version of the PCCO adopted for AT&T.

If the Commission refuses to reconsider the application of the PCCO to the price cap LECs, the Commission should reconsider and clarify the BFRO. As adopted in the Report and Order, the BFRO is unduly burdensome and fails to provide any flexibility to those LECs, like BellSouth, that have aggressively deployed new technology.

The Commission's decision to use as a starting point for establishing ranges one standard deviation around the mean of current basic factors¹¹ means that, by definition, up to one third of the carriers will be deprived the benefit of the simplification that the BFRO was intended to create. The additional requirement that both factors, the projection

¹¹ Report and Order at ¶¶ 61-62.

life and future net salvage, must be within the range¹² means that an even larger percentage of LECs may not receive the benefit of simplification.

The Commission recognizes the comments of several parties, including both LECs and state Commissions, that ranges that exclude currently prescribed basic factors would be too narrow.¹³ Nonetheless, the Report and Order uses a width of one standard deviation around the mean as a starting point to establish the ranges.

BellSouth respectfully requests that the Commission reconsider this decision. A width of two standard deviations around the mean is necessary to encompass 96 percent of the existing, prescribed basic factors. There is no reason to assume that such a range is too wide to permit the Commission to maintain effective oversight over depreciation rates. Narrower ranges largely eliminate the perceived simplification that the Commission apparently intended.

The Commission's decision to use current basic factors to set the ranges does not give sufficient weight to technological obsolescence, since data prescribed over a prior three year period is used to set the ranges for the succeeding three years. Thus, there is up to a six year lag in the data from the time the Commission uses it to

¹² Report and Order at ¶ 74.

¹³ Report and Order at ¶ 60.

establish the ranges to the time that it is used by some LECs to establish their basic factors within the range. In light of the technological changes sweeping the telecommunications industry, the Commission should reconsider its decision to use historically prescribed basic factors rather than the basic factors proposed by the carriers in their latest prescription to establish the initial ranges.

The Report and Order also requires that carriers whose current basic factors are not within the range must file a complete study to get into the ranges for those accounts not currently within the range for both factors.¹⁴ The Commission does not justify this requirement, and its adoption appears contrary to the goal of simplification. If the range is presumed reasonable, it appears unnecessary to require a full data submission to move within the range. The Commission should reconsider these requirements.

The effect on BellSouth of the BFRO adopted in the Report and Order is to deny BellSouth any appreciable simplification or flexibility until the turn of the century. The 22 plant categories identified in the Order Inviting Comments¹⁵ amount to less than 24 percent of BellSouth's

¹⁴ Report and Order at ¶ 77.

¹⁵ In the Matter of Simplification of the Depreciation Prescription Process, CC Docket No. 92-296, Order Inviting Comments, FCC 93-492, released November 12, 1993 ("Order Inviting Comments").

investment. Of those plant categories, BellSouth's existing prescribed depreciation rates would put BellSouth within the ranges proposed by the Commission for both basic factors for less than six percent of BellSouth's investment.

BellSouth's nine states are scheduled for represcription in 1995 and 1996. With the requirement in the Report and Order that BellSouth file detailed studies to get within the ranges at the time of their next prescription,¹⁶ BellSouth will not receive any appreciable benefit from the BFRO until 1998 and 1999.

As demonstrated above, the BFRO will not provide any meaningful relief for carriers such as BellSouth that have aggressively deployed new technology. Therefore, BellSouth strongly recommends that the Commission reconsider the Report and Order. The Commission obviously intended that the depreciation prescription process for price cap LECs become more simple, administratively efficient and flexible. Only the PCCO will accomplish those goals.

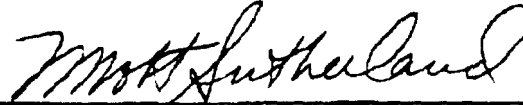
The Commission adopted price cap regulation to provide carriers with positive economic incentives to upgrade their networks. The Commission placed the burden of capital recovery on the carriers by treating depreciation changes as endogenous, based on the rationale that carriers control their investment and retirement decisions. The PCCO provides the Commission with the ability to complete the

¹⁶ Report and Order at ¶ 77.

process by giving carriers the basic responsibility to recover their capital investment in a timely and prudent manner, subject to the Commission's regulatory oversight. The Commission should not forego this opportunity to adopt meaningful depreciation reform, rather than the mere illusion of such reform.

Respectfully submitted:

BELLSOUTH TELECOMMUNICATIONS, INC.
By its Attorney:


A handwritten signature in cursive script, appearing to read "M. Robert Sutherland", is written over a horizontal line.

M. Robert Sutherland
4300 Southern Bell Center
675 W. Peachtree Street, N.E.
Atlanta, Georgia 30375
404 529-3854

December 6, 1993

CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of December, 1993 serviced all parties to this action with a copy of the foregoing PETITION FOR RECONSIDERATION by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties as set forth on the attached service list.


Gordana Coley

SERVICE LIST FOR 92-296

Cheryl A. Tritt*
Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Gerald P. Vaughan*
Deputy Chief—Operations
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Kenneth P. Moran*
Chief, Accounting and Audits Division
Common Carrier Bureau
Federal Communications Commission
2000 L Street, N.W., Room 812
Washington, D.C. 20554

Accounting and Audits Division*
Common Carrier Bureau
Federal Communications Commission
2000 L Street, N.W., Room 812
Washington, D.C. 20554
(2 Copies)

International Transcription Service*
1919 M Street, N.W.
Suite 246
Washington, D.C. 20554

Paul Schwedler, Esq.
Asst. Regulatory Counsel, Telecommunications
Defense Information Agency, Code AR
701 South Courthouse Road
Arlington, VA 22204-2199

Mary McDermott
Campbell L. Ayling
New York Telephone Company and
New England Telegraph Company
120 Bloomingdale Road
White Plains, NY 10605

James E. Taylor
Richard C. Hartgrove
Bruce E. Beard
Southwestern Bell Telephone Company
One Bell Center, Suite 3520
St. Louis, MO 63101

Richard B. Lee
Senior Consultant
Snevely, King & Associates, Inc.
1220 L Street, N.W.—Suite 410
Washington, D.C. 20005

Telecommunications Reports
11th Floor, West Tower
1333 H Street, N.W.
Washington, D.C. 20005

Thomas E. Taylor
William D. Baskett III
Christopher J. Wilson
Attorneys for Cincinnati Bell Telephone
Company
Frost & Jacobs
2500 PNC Center
201 E. Fifth Street
Cincinnati, OH 45202

Linda D. Hershman
Vice President—External Affairs
The Southern New England Telephone
Company
227 Church Street
New Haven, CT 06510

James P. Tuthill
Lucile M. Mates
Attorneys for Pacific Bell and Nevada Bell
140 New Montgomery Street
Room 1528
San Francisco, CA 94105

James L. Wurtz
Attorney for Pacific Bell and Nevada Bell
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Jay C. Keithley
Attorney for United Telephone—Southeast
Inc.
1850 M Street, N.W.
Suite 1100
Washington, D.C. 20036

W. Richard Morris
Attorney for United Telephone—Southeast
Inc.
P.O. Box 11315
Kansas City, MO 64112

Floyd S. Keene
Barbara J. Kern
Ameritech Operating Companies
2000 West Ameritech Center Drive
Room 4H88
Hoffman Estates, IL 60196

James T. Hannon
U S West Communications, Inc.
1020 - 19th Street, N.W.
Suite 700
Washington, DC 20036

Martin T. McCue
Vice President and General Counsel
United States Telephone Association
900 - 19th Street, N.W.
Suite 800
Washington, D.C. 20006-2105

Christopher W. Savage
Attorney for Bell Atlantic
1710 H Street, N.W.
Washington, D.C. 20006

Frank W. Lloyd
Attorney for California Cable Television
Association
Mints, Levin, Cohn, Ferris, Givsky
and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004

Michael McRae
District of Columbia
Office of People's Counsel
1133 - 15th Street, N.W.
Suite 500
Washington, D.C. 20005

Tim Seat
Indiana Office of Utility Consumer
100 N. Senate Avenue
Room N 501
Indianapolis, IN 46204

Philip F. McClelland
Laura Jan Goldberg
Pennsylvania Office of Consumer Advocate
Office of Attorney General
1425 Strawberry Square
Harrisburg, PA 17120

Charles Beck
Earl Poucher
Florida Office of Public Counsel
812 Claude Pepper Building
111 West Mochlan Street
Tallahassee, FL 32399

Richard McKenna, HQE03J33
GTE Service Corporation
P.O. Box 15092
Irving, TX 75015-2092

Gail L Polivy
Attorney for GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Francine J. Berry
Robert J. McKee
Peter H. Jacoby
American Telephone and Telegraph
Company
295 North Maple Avenue
Room 3244J1
Basking Ridge, NJ 07920

Elizabeth Dickerson
Manager, Regulatory Analysis
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20036

Alan J. Gardner
Vice President, Regulatory & Legal Affairs
California Cable Television Association
4341 Piedmont Avenue
Oakland, CA 94611

Frank E. Landis
State of Nebraska
Public Service Commission
300 The Atrium
Lincoln, NE 68508

Eric Witte
Assistant General Counsel for the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Peter Arth, Jr.
Edward W. O'Neill
Ellen S. Levine
Public Utilities Commission of the
State of California
505 Van Ness Avenue
San Francisco, CA 94102

Scott Cullen, P.E.
Administrator—Telecommunications Division
Public Service Commission of Wisconsin
4802 Sheboygan Avenue
P.O. Box 7854
Madison, WI 53707-7854

Edward C. Addison, Director
William Irby, Manager
Division of Communications
Virginia State Corporation Commission Staff
P.O. Box 1197
Richmond, VA 23209

Maribeth D. Snapp
Deputy General Counsel
Oklahoma Corporation Commission
Public Utility Division
400 Jim Thorpe Office Building
Oklahoma City, OK 73105

Thomas F. Peel
Utah Division of Public Utilities
160 East 300 South
P.O. Box 45807
Salt Lake City, UT 84145-0807

Leo M. Reinbold
Susan E. Wefald
Patrice Hagen
Public Service Commission
State of North Dakota
State Capitol
Bismarck, ND 58505

Rowland L. Curry
Director
Telephone Utility Analysis Division
Public Utility Commission of Texas
7800 Shoal Creek Boulevard
Austin, TX 78757

Ruth Ann Townsend
Commission Secretary
Indiana Utility Regulatory Commission
Indiana Government Center South
302 West Washington Street
Suite E306
Indianapolis, IN 46204

William J. Cowan
General Counsel
New York State Department of Public Service
Three Empire State Plaza
Albany, NY 12223

Michael P. Gallagher, Director
Division of Telecommunications
State of New Jersey
Board of Regulatory Commissioners
CN 350
Trenton, NJ 08620-0350

Paul Rodgers
Charles D. Gray
James Bradford Ramsay
National Association of Regulatory Utility
Commissioners
1101 ICC Building
P.O. Box 684
Washington, D.C. 20044

Ronald G. Choura
Policy Division
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Robert E. Temmer, Chairman
Colorado Public Utilities Commission
Office Level 2 (OL-2)
1580 Logan Street
Denver, CO 80203

Stephanie Miller
Director of Utilities
Idaho Public Utilities Commission
Statehouse
Boise, ID 83720-0000